Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Eligibility for the Specialized	)	
Mobile Radio Services and Radio	)	GN Docket No. 94-90
Services in the 220-222 MHz Land	)	
Mobile Band and Use of Radio	)	
Dispatch Communications	)	

To: The Commission

REQUEST FOR PARTIAL RECONSIDERATION
AND FOR CLARIFICATION
OF THE
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.

Respectfully submitted,

AMERICAN MOBILE TELECOMMUNICATIONS
ASSOCIATION, INC.

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April 24, 1995

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REQUEST FOR PARTIAL RECONSIDERATION AND FOR CLARIFICATION OF THE AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.

The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), in accordance with Section 1.429 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, 47 C.F.R. § 1.429, respectfully requests limited reconsideration of the Commission's decision in the above-entitled proceeding.[1/] AMTA agrees fully with the Commission's determination to eliminate the prohibition against wireline telephone common carriers holding or controlling SMR and commercial 220 MHz licenses. However, the Association is not persuaded that the record in this proceeding, or the analysis in the R&O, support the abandonment of the preclusion against the provision of dispatch service on common carrier spectrum. AMTA urges the Commission to reconsider that aspect of this decision and, at a minimun, to defer the effective date for that change until August 10, 1996.

[1/] Report and Order, GN Docket No. 94-90, FCC 95-98, 9 FCC Rcd ____ (Released March 7, 1995)("R&O").

Further, in the event that the FCC does not grant the relief requested herein, AMTA requests clarification of one aspect of the FCC's rules regarding the provision of dispatch service by Part 22 licensees.

I. BACKGROUND

The recent impetus for this proceeding was enactment of the Omnibus Budget Reconciliation Act of 1993 in which Congress amended the Communications Act and, among other matters, adopted a new, comprehensive regulatory framework for the mobile services marketplace.[2/] A fundamental tenet of the modified structure was the concept of regulatory symmetry. Congress directed the FCC to adopt rules whereby "substantially similar" services would be regulated in an even-handed fashion.

Congress noted both of the prohibitions at issue in the instant proceeding in its deliberations on the Budget Act. The Commission was encouraged to re-evaluate the prohibition against wireline ownership of SMR systems in light of the changed regulatory environment.[3/] By contrast, Congress retained the statutory ban against common carrier provision of dispatch service, but authorized the Commission to repeal it by regulation in whole or in part.[4/]

In the Notice of Proposed Rule Making in this proceeding, the Commission tentatively determined that both the wireline SMR and common carrier dispatch

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[2/] Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312 (1993)("Budget Act").

[3/] See H. Rep. No. 111, 103d Cong., 1st Sess. at 262.

[4/] See 47 U.S.C. § 332(c) (1993).

prohibitions should be eliminated.[5/] Its preliminary determinations subsequently were adopted in full in the R&O.

II. ELIMINATION OF THE PROHIBITION AGAINST THE PROVISION OF DISPATCH SERVICE ON COMMON CARRIER SPECTRUM IS NOT REQUIRED TO ACHIEVE REGULATORY PARITY AND WILL IMPEDE EFFECTIVE COMPETITION IN THE CMRS MARKETPLACE.

In the R&O, the Commission asserts that repeal of the dispatch prohibition will enhance competition and thereby provide consumers with expanded choices and lower prices. R&O at ¶ 29. It further states that retention of the ban is inconsistent with the movement toward a symmetrical regulatory framework for all Commercial Mobile Radio Service ("CMRS") licensees. R&O at ¶ 29. It notes that improved technologies have minimized the likelihood that diversion of capacity from interconnected to dispatch service will reduce the quality of the former. R&O at ¶ 29. Finally, the FCC identifies a shortage of dispatch offerings generally, and particularly in rural areas, as a basis for its decision to repeal the ban. R&O at ¶ 30.

AMTA disagrees. The record in this proceeding does not support the rationales proffered by the agency in support of its action. For this reason, the Association requests that the FCC reconsider fully, or at least modify, its decision regarding common carrier dispatch service.

Initially, The Association disagrees that this decision is dictated by the Congressional directive to promote regulatory parity. As noted in the Comments and

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[5/] Notice of Proposed Rule Making, GN Docket No. 94-90, 9 FCC Rcd 4405 (1994).

Reply Comments filed in this proceeding by AMTA and other parties, common carriers never have been denied the opportunity to offer dispatch service. The only limitation on its provision was spectrum rather than entity specific. Non-wireline carriers always have been free to provide dispatch service on any available Part 90 spectrum. 47 C.F.R. § 90.555. Wireline carriers were precluded from doing so only in the bands above 800 MHz. It is apparent that the absence of Part 22 licensees from the dispatch marketplace had nothing to do with regulatory fiat, and everything to do with the limited spectrum resources available in the private land mobile services which apparently were inadequate to attract the interest of more amply spectrally endowed Part 22 operators. Thus, elimination of the prohibition is not necessary to achieve regulatory parity. Symmetry exists already since Part 22 eligibles are free to offer dispatch communications on the same terms and conditions as Part 90 entities by offering the service on Part 90 spectrum.

The Association does not disagree with the FCC's determination that technological advances will allow a given amount of spectrum to support a larger, more diverse array of service offerings. Cellular operators indifferent to the possibility of developing dispatch systems on Part 90 spectrum may elect to dedicate unused cellular capacity for that purpose upon elimination of the ban. However, as detailed below, AMTA sees no basis in the record for the retention of that excess spectrum by the current licensee.

Additionally, the Association must challenge the Commission's intimation that common carrier dispatch will alleviate the need for additional private land mobile spectrum capacity. R&O at ¶ 30. The private land mobile community's intense interest

in the FCC's so-called "refarming" effort[6/] evidences a desire for capacity to meet internal communications requirements which cannot be satisfied fully by third-party commercial offerings. AMTA recognizes that not every dispatch requirement would be served optimally by an SMR system, even if SMR capacity were available. The same will be true for comparable Part 22 offerings. Moreover, the need for additional spectrum to accommodate these requirements is most pressing in more urban areas, the same markets in which cellular capacity is severely limited. Rural areas have compelling telecommunications-related concerns as well, but spectrum availability is not among them.

Finally, the R&O offers no evidence to support its assertion that "elimination of the dispatch prohibition will benefit rural communities by facilitating competition in underserved areas and will allow some rural subscribers to obtain low-cost dispatch service from a third-party provider for the first time." R&O at ¶ 30. The sole citation on this point incorrectly identifies Rochester Tel Cellular Holding Corporation as noting potential benefits to farmers and ranchers from repeal of the ban. R&O at n. 102.

In fact, the party that advanced that argument was the Rural Cellular Association. However, that proponent of rural cellular opportunities itself provided no factual predicate for its assertion that cellular dispatch would "allow rural subscribers to obtain dispatch type services for the first time ever."[7/] That claim is unsupported and, AMTA

[6/] Notice of Proposed Rule Making, PR Docket No. 92-235, 7 FCC Rcd 8105 (1992).

[7/] Comments of the Rural Cellular Association at p. 3.

believes, unsupportable. Rural customers may secure Part 90 licenses to operate their own dispatch systems. Additionally, there are third-party community repeater, private carrier and SMR systems in virtually every hamlet in the country. There is no basis for assuming that a rural cellular operator will provide service to areas which today are totally devoid of dispatch options.

The fundamental issue in this proceeding is not whether underutilized or unutilized Part 22 spectrum should be employed to inject additional competition into the already highly competitive dispatch marketplace. The issue is whether spectrum which has been determined to be superfluous for the provision of cellular service should be retained automatically by the cellular operator to be used for alternative purposes.

AMTA thinks not. If there is excess cellular spectrum in a particular market, the Association agrees that it should be redeployed and dedicated to more productive uses, including dispatch service if that is dictated by demand in that area. The Association disagrees, however, that the spectrum should remain licensed under the cellular authorization and controlled by that entity. Rather, spectrum which is not needed to provide a cellular service should be recovered by the Commission and reassigned to whatever party values it most highly as determined by competitive bidding.

At a minimun, if a significant rationale for this action is the desire to promote regulatory symmetry, then the prohibition should be retained until the end of the transition period specified in the Budget Act.[8/] Private carriers will not be shielded from additional competition during this period, as indicated in the R&O, since the Part

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[8/] Budget Act at § 6002(d)(3).

90 regulatory structure already facilitates marketplace entry by comparably spectrum endowed competitors. New operators join this competitive fray on a regular basis. Retention of the now approximately one-year remaining transition period for this purpose will better ensure the continuation of a robust, competitive CMRS marketplace.

Finally, should the FCC deny the reconsideration requested herein, AMTA requests that it clarify the statement that Part 22 licensees will be permitted to provide non-interconnected dispatch service as long as their dispatch users also have the ability to utilize interconnected service if they so desire. R&O at n. 96. It is not clear whether this requirement must be satisfied by offering an integrated interconnected/dispatch service, or whether it would be met by the provision of parallel offerings, perhaps even provided by different parties. The Association assumes that the first interpretation is consistent with the FCC's objectives, but suggests that further clarification of this point is necessary.

III. CONCLUSION

For the reasons described above, AMTA urges the Commission to proceed expeditiously to complete this proceeding consistent with the recommendations detailed herein.

CERTIFICATE OF SERVICE

I, Cheri Skewis, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this 24th day of April, 1995, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing Request for Partial Reconsideration and for Clarification to the following:

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